

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

DONALD ZAWADA,	)	
	)	
Petitioner	)	
	)	
vs.	)	CAUSE NO. 3:09-CV-362 RM
	)	(Arising out of 3:06-CR-120(01) RM)
UNITED STATES OF AMERICA,	)	
	)	
Respondent	)	

OPINION and ORDER

This matter is before the court on Donald Zawada's February 6, 2010 motion requesting an evidentiary hearing on his petition filed pursuant to 28 U.S.C. § 2255. On February 1, 2010, the court denied Mr. Zawada's § 2255 petition without an evidentiary hearing. The court found that "[b]ased on a review of the parties' filings and the record of this case, . . . the factual and legal issues raised by Mr. Zawada may be resolved on the record, so no hearing on his § 2255 petition is necessary. See Menzer v. United States, 200 F.3d 1000, 1006 (7th Cir. 2000) (hearing not required where record conclusively demonstrates that petitioner is entitled to no relief on § 2255 motion)." For the reasons stated in its February 1 order, the court denies Mr. Zawada's motion for evidentiary hearing.

To the extent Mr. Zawada raises new issues in his motion for evidentiary hearing, the court considers the motion a second or successive § 2255 petition. Successive § 2255 petitions may not be filed without leave of the court of appeals, which may grant leave only when there is newly discovered evidence or a new rule

of constitutional law that was previously unavailable to the defendant. See 28 U.S.C. § 2255(h); *see also* Nunez v. United States, 96 F.3d 990, 991 (7th Cir. 1996) ("A district court must dismiss a second or successive petition, without awaiting any response from the government, unless the court of appeals has given approval for its filing."). Before a second or successive petition is filed with the district court, "the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A). Mr. Zawada hasn't asked the appropriate appellate court for such authorization.

For the reasons stated above, the court DENIES Mr. Zawada's motion for an evidentiary hearing (doc. # 187 in Cause No. 3:06-CR-120 and doc. # 6 in Cause No. 3:09-CV-362).

SO ORDERED.

ENTERED: February 19, 2010

/s/ Robert L. Miller, Jr.  
Judge  
United States District Court

cc: D. Zawada  
F. Schaffer